

REMARKS

Claims 1, 4-6, 8-11, 14-16 and 18-33 are pending in the present application. By this Amendment, previously presented claims 1, 4, 9, 11, 18, 21 and 23-27 have been amended; and new claims 28-33 have been added. Applicants respectfully request reconsideration of the present claims in view of the foregoing amendments and the following remarks.

I. Formal Matters:

Objection to Abstract

The original Abstract has been amended as shown above. As noted in Applicants' January 04, 2010 Amendment and Response, the present application is a national phase application filed under 35 U.S.C. §371, so MPEP §1893.03(c) and MPEP §608.01(b) apply.

Applicants respectfully submit that the present Abstract meets the requirements of MPEP §1893.03(c) and MPEP §608.01(b). Accordingly, withdrawal of the objection to the Abstract is respectfully requested.

Objection to Claims

Applicants note the objection to language used in previously presented claims 1, 4-6 and 8 as discussed in the March 19, 2010 final Office Action; however, Applicants respectfully submit that further action on the part of Applicants is unnecessary. Accordingly, withdrawal of the objection to previously presented claims 1, 4-6 and 8 is respectfully requested.

II. Prior Art Rejection:

Rejection of Previously Presented Claims 1, 4, 6 and 8 Under 35 U.S.C. §102(b) In View U.S. Patent No. 3,210,248 (Feldmann)

Previously presented claims 1, 4, 6 and 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,210,248 issued to Feldmann et al. (hereinafter, "Feldmann"). This rejection is respectfully traversed.

In order for the disclosure of Feldmann to anticipate Applicants' claimed invention, the disclosure of Feldmann must disclose each and every claim feature recited in the claims. See, for example, *Finnigan Corp. v. International Trade Commission*, 180 F.3d 1354,

1365, 51 USPQ2d 1001, 1009 (Fed. Cir. 1999), in which the Court stated “In order to establish anticipation, a prior art reference must disclose every feature of the claimed invention.”

The disclosure of Feldmann fails to disclose at least the following claim features recited in Applicants' independent claim 1:

(1) an aqueous concentrate comprising a water-insoluble liquid silicone-containing antifoam agent wherein the water-insoluble liquid silicone-containing antifoam agent is incorporated into the concentrate as a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids; and

(2) an aqueous concentrate comprising a water-insoluble liquid silicone-containing antifoam agent, wherein the water-insoluble liquid silicone-containing antifoam agent is present in an organic solvent at a concentration of at least 10% by weight.

Applicants note that Feldmann discloses the use of an antifoam component, namely, Antifoam AF emulsion, in each of Examples 14-15, wherein Antifoam AF emulsion is described as “a water dilutable dispersion of 30% Antifoam A, an organo silicone oxide polymer, obtained from Dow-Corning Corp., Midland, Mich.” Feldmann does not disclose, teach or suggest that any of the Antifoam A is solubilized in the isopropyl myristate also present in the topical creams and lotions of Examples 14-15. However, even if all of the Antifoam A were to be solubilized in the isopropyl myristate (and Applicants are not suggesting that this is the case), the Antifoam A would be present in the isopropyl myristate at a maximum concentration of 0.06 wt% Antifoam A in the isopropyl myristate.

Since the disclosure of Feldmann fails to disclose each and every claim feature recited in Applicants' independent claim 1, the disclosure of Feldmann cannot anticipate independent claim 1. Since claims 4, 6 and 8 depend from independent claim 1, and recite additional claim features, the disclosure of Feldmann cannot anticipate dependent claims 4, 6 and 8. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 1, 4, 6, 9-11, 14, 16, 19, 21 and 23 Under 35 U.S.C. §102(b) In View U.S. Patent Publication No. 2003/0072776 (Sun)

Previously presented claims 1, 4, 6, 9-11, 14, 16, 19, 21 and 23 stand rejected

under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Publication No. 2003/0072776 to Sun et al. (hereinafter, "Sun"). This rejection is respectfully traversed for the reasons given in Applicants' January 04, 2010 Amendment and Response and the reasons given below.

The disclosure of Sun fails to disclose at least the following claim features recited in Applicants' independent claim 1:

(1) an aqueous concentrate or aqueous composition comprising an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids (claims 1, 9, 21 and 23);

(2) an aqueous concentrate comprising a water-insoluble liquid silicone-containing antifoam agent in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids, wherein the water-insoluble liquid silicone-containing antifoam agent is present in the organic solvent at a concentration of at least 10% by weight (claim 1 and 9);

(3) an aqueous concentrate composition comprising an agrochemical, one or more foam-inducing surfactants and a water-insoluble liquid silicone-containing antifoam agent, wherein the organic solvent is selected such that a density of the solution of the water-insoluble liquid silicone-containing antifoam agent in the organic solvent differs from a density of the aqueous concentrate composition measured in the absence of the organic solvent and water-insoluble liquid silicone-containing antifoam by not more than 0.1 g/l density units, all density measurements being conducted at room temperature (claim 21); and

(4) an aqueous composition comprising an organic solvent, wherein the organic solvent is an alkyl ester, aralkyl ester or aryl ester of an organic acid, and wherein the ester (a) contains the water-insoluble liquid silicone-containing antifoam at a concentration of greater than 12% by weight; (b) provides a solution of the water-insoluble liquid silicone-containing antifoam having a density of greater than 0.8 g/ml; and (c) has a flash point of greater than 40°C (claim 23).

Applicants note that the March 19, 2010 final Office Action appears to suggest that the AROMATIC 100 and AROMATIC 150 solvents disclosed in Sun comprise organic solvents as claimed in Applicants' claimed invention. However, Applicants note that

AROMATIC 100 and AROMATIC 150 are hydrocarbon solvents, not an organic solvent comprising an alkyl ester, aralkyl ester or aryl ester of an organic acid.

Since the disclosure of Sun fails to disclose each and every claim feature recited in Applicants' independent claims 1, 9, 21 and 23, the disclosure of Sun cannot anticipate independent claims 1, 9, 21 and 23. Since claims 4, 6, 10-11, 14, 16 and 19 depend from independent claims 1 and 9, and recite additional claim features, the disclosure of Sun cannot anticipate dependent claims 4, 6, 10-11, 14, 16 and 19. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 1, 4-6, 9-11, 14-16 and 19-27 Under 35 U.S.C. §102(b) In View U.S. Patent No. 6,162,764 (Atkinson)

Previously presented claims 1, 4-6, 9-11, 14-16 and 19-27 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,162,764 to Atkinson et al. (hereinafter, "Atkinson"). This rejection is respectfully traversed for the reasons given in Applicants' January 04, 2010 Amendment and Response and the reasons given below.

The disclosure of Atkinson fails to disclose at least the following claim features recited in Applicants' independent claim 1:

(1) an aqueous concentrate or aqueous composition comprising an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids (claims 1, 9, 21 and 23);

(2) an aqueous concentrate comprising a water-insoluble liquid silicone-containing antifoam agent in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids, wherein the water-insoluble liquid silicone-containing antifoam agent is present in the organic solvent at a concentration of at least 10% by weight (claim 1 and 9);

(3) an aqueous concentrate composition comprising an agrochemical, one or more foam-inducing surfactants and a water-insoluble liquid silicone-containing antifoam agent, wherein the organic solvent is selected such that a density of the solution of the water-insoluble liquid silicone-containing antifoam agent in the organic solvent differs from a density of the

aqueous concentrate composition measured in the absence of the organic solvent and water-insoluble liquid silicone-containing antifoam by not more than 0.1 g/l density units, all density measurements being conducted at room temperature (claim 21);

(4) an aqueous composition comprising an organic solvent, wherein the organic solvent is an alkyl ester, aralkyl ester or aryl ester of an organic acid, and wherein the ester (a) contains the water-insoluble liquid silicone-containing antifoam at a concentration of greater than 12% by weight; (b) provides a solution of the water-insoluble liquid silicone-containing antifoam having a density of greater than 0.8 g/ml; and (c) has a flash point of greater than 40°C (claim 23);

(5) a method of reducing foaming of an aqueous agrochemical composition, the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters or aryl esters of organic acids (claim 24);

(6) a method of reducing foaming of an aqueous agrochemical composition, the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters or aryl esters of organic acids, wherein the water-insoluble liquid silicone-containing antifoam agent is present in the organic solvent at a concentration of at least 10% by weight (claim 24); and

(7) a method for reducing or eliminating separation of a water-insoluble liquid silicone-containing antifoam in an aqueous agrochemical composition, the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the aqueous agrochemical composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids (claim 25).

Applicants note that Atkinson discloses suitable aliphatic solvents for use in the disclosed pre-mixture compositions in column 4, lines 22-53. It should be further noted that Atkinson teaches away from the use of specific solvents in column 4, lines 53-57 due to their incompatibility with required components of the disclosed pre-mixture compositions (e.g., the polymeric components). The incompatible solvents include vegetable oils, methyl esters,

aromatic solvents, alcohols, ketones, glycols, glycol ethers, and water.

Since the disclosure of Atkinson fails to disclose each and every claim feature recited in Applicants' independent claims 1, 9, 21, 23, 24 and 25, the disclosure of Atkinson cannot anticipate independent claims 1, 9, 21, 23, 24 and 25. Since claims 4-6, 10-11, 14-16, 19-20, 22 and 26-27 depend from independent claims 1, 9, 21 and 25, and recite additional claim features, the disclosure of Atkinson cannot anticipate dependent claims 4-6, 10-11, 14-16, 19-20, 22 and 26-27. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 5 and 24-27 Under 35 U.S.C. §103(a) In View Of Sun

Previously presented claims 5 and 24-27 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Sun. This rejection is respectfully traversed.

Previously presented claim 5 depends from independent claim 1. As discussed above, the teaching of Sun fails to disclose an aqueous concentrate or aqueous composition comprising an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids as recited in independent claim 1.

Independent claim 24 is directed to a method of reducing foaming of an aqueous agrochemical composition, wherein the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters or aryl esters of organic acids.

Independent claim 25 is directed to a method for reducing or eliminating separation of a water-insoluble liquid silicone-containing antifoam in an aqueous agrochemical composition, wherein the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the aqueous agrochemical composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids. Previously presented claims 26-27 depend from independent claim 25 and recite additional claim features.

The teaching of Sun fails to teach or suggest (1) an organic solvent comprising at

least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids, (2) any composition comprising such an organic solvent, and (3) any method using such organic solvents in an agrochemical composition. Consequently, the teaching of Sun cannot make obvious Applicants' claimed invention as embodied in claims 5 and 24-27.

For at least the reasons given above, the teaching of Sun fails to make obvious Applicant's claimed invention as recited in claims 5 and 24-27. Accordingly, withdrawal of this rejection is respectfully requested.

It should be noted that page 7, lines 16-17 of the March 19, 2010 final Office Action contains the following incorrect statement:

Sun et al (paragraph [0073]) discloses the solvents employed in the emulsifiable concentrates including fatty acid esters that read on the compounds claimed in the claims.

In paragraph [0073], the teaching of Sun discloses "sugar esters of fatty acids, e.g., sucrose esters," not fatty acid esters, and especially not an alkyl ester, an aralkyl ester or an aryl ester of an organic acid as recited in Applicants' claimed invention.

Rejection of Previously Presented Claims 1, 5-6, 8-9, 15-16 and 18 Under 35 U.S.C. §103(a) In View Of Sun In Combination With U.S. Patent No. 4,338,217 (Pirson)

Previously presented claims 1, 5-6, 8-9, 15-16 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Sun and further in view of U.S. Patent No. 4,338,217 issued to Pirson et al. (hereinafter, "Pirson"). This rejection is respectfully traversed for the reasons given in Applicants' January 04, 2010 Amendment and Response and the reasons given below.

As discussed above, the teaching of Sun fails to disclose, teach or suggest (1) an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids, (2) any composition comprising such an organic solvent, and (3) any method using such organic solvents in an agrochemical composition.

The teaching of Pirson is directed to antifoam compositions comprising (i) an organopolysiloxane having a specific chemical structure, and (ii) a solid dispersed in the

organopolysiloxane. Beginning in column 3, line 48, the teaching of Pirson discloses that other additives may be incorporated into the disclosed antifoam compositions. Specifically, Pirson discloses:

Examples of other agents which may be present in the antifoams of this invention are other organopolysiloxanes which exhibit antifoam properties, such as trimethylsiloxy endblocked dimethylpolysiloxanes, water-soluble liquids other than organopolysiloxanes which exhibit antifoam properties, such as mineral oils, vegetable oils, orthophosphoric acid esters, esters of carboxylic acids and monovalent alcohols, such as isopropyl myristate, di-n-butyladipate, di-n-butyl sebacate, tridecyl stearate, iso-octadecyl stearate and di-2-ethylhexyladipate. Furthermore, the antifoams may be mixed with alkanols having from 2 to 18 carbon atoms, such as ethanol, isopropanol, isobutanol, 2-ethylhexanol or isotridecyl alcohol, or they may be present with mixtures of such alkanols.

The antifoams of this invention may also be mixed with an emulsifier and/or protective colloid.

The March 19, 2010 final Office Action suggests that one skilled in the art, given the teaching of Sun directed to emulsifiable concentrate compositions, would have been motivated to (1) seek out the teaching of Pirson directed to specific antifoam compositions, and (2) subsequently modify the emulsifiable concentrate compositions of Sun by incorporating isopropyl myristate from the antifoam compositions of Pirson into the emulsifiable concentrate compositions of Sun. Applicants disagree.

Applicants respectfully submit that there is no suggestion in the teaching of Sun, the teaching of Pirson, or the general state of the art of the need or desire to modify the emulsifiable concentrate compositions of Sun as suggested in the March 19, 2010 final Office Action. The teaching of Sun clearly describes suitable components, including additives, for the disclosed emulsifiable concentrate compositions. See, for example, paragraphs [0043] to [0056], [0059] to [0062], [0068] to [0070] and [0073] to [0077]. Further, the examples in the teaching of Sun clearly demonstrate the sensitive nature of the disclosed emulsifiable concentrate compositions and how slight modification of Sun's disclosed emulsifiable concentrate compositions can negatively impact the stability of a given emulsifiable concentrate composition.

Given the stability concerns of the disclosed emulsifiable concentrate compositions of Sun and the clear disclosure of Sun regarding suitable, and preferred, emulsifiable concentrate composition components, it is difficult for Applicants to understand why one skilled in the art would have modified the disclosed emulsifiable concentrate compositions of Sun as suggested in the March 19, 2010 final Office Action. Applicants respectfully submit that the only motivation and suggestion of the need to modify the disclosed emulsifiable concentrate compositions of Sun as suggested in the March 19, 2010 final Office Action has been gleaned from Applicants' own specification, not the art of record or the general state of the art. As Examiner Metzmaier is aware, "One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention", *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988).

For at least the reasons given above, Applicants respectfully submit that the proposed combination of the teaching of Sun with the teaching of Pirson fails to make obvious Applicants' claimed invention as recited in independent claims 1 and 9. Since claims 5-6, 8, 15-16 and 18 depend from independent claims 1 and 9, and recite additional claim features, the proposed combination of the teaching of Sun with the teaching of Pirson also fails to make obvious dependent claims 5-6, 8, 15-16 and 18. Accordingly, withdrawal of this rejection is respectfully requested.

Rejection of Previously Presented Claims 1, 4-6, 9-11, 14-16 and 19-27 Under 35 U.S.C. §103(a) In View Of U.S. Patent No. 6,403,163 (Fisher)

Previously presented claims 1, 4-6, 9-11, 14-16 and 19-27 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of U.S. Patent No. 6,403,163 issued to Fisher et al. (hereinafter, "Fisher"). This rejection is respectfully traversed for the reasons given in Applicants' January 04, 2010 Amendment and Response and the reasons given below.

As discussed in Applicants' January 04, 2010 Amendment and Response, the teaching of Fisher is directed to water-repellant compositions. One skilled in the art seeking to (i) formulate an agrochemical concentrate, (ii) formulate an agrochemical composition, or (iii) reduce or eliminate foaming in an agrochemical composition would not even consider the

teaching of Fisher.

The teaching of Fisher fails to disclose, teach or suggest at least the following claim features recited in Applicants' claimed invention:

- (1) an aqueous concentrate or aqueous composition (claims 1, 9, 21 and 23);
- (2) an aqueous concentrate or aqueous composition comprising an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids (claims 1, 9, 21 and 23);
- (3) an agrochemical (claims 9, 21 and 23);
- (4) an aqueous concentrate comprising a water-insoluble liquid silicone-containing antifoam agent in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids, wherein the water-insoluble liquid silicone-containing antifoam agent is present in the organic solvent at a concentration of at least 10% by weight (claim 1 and 9);
- (5) an aqueous concentrate composition comprising an agrochemical, one or more foam-inducing surfactants and a water-insoluble liquid silicone-containing antifoam agent, wherein the organic solvent is selected such that a density of the solution of the water-insoluble liquid silicone-containing antifoam agent in the organic solvent differs from a density of the aqueous concentrate composition measured in the absence of the organic solvent and water-insoluble liquid silicone-containing antifoam by not more than 0.1 g/l density units, all density measurements being conducted at room temperature (claim 21);
- (6) an aqueous composition comprising an organic solvent, wherein the organic solvent is an alkyl ester, aralkyl ester or aryl ester of an organic acid, and wherein the ester (a) contains the water-insoluble liquid silicone-containing antifoam at a concentration of greater than 12% by weight; (b) provides a solution of the water-insoluble liquid silicone-containing antifoam having a density of greater than 0.8 g/ml; and (c) has a flash point of greater than 40°C (claim 23);
- (7) a method of reducing foaming of an aqueous agrochemical composition, the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the composition in the form of a solution in an organic solvent comprising at least one member

selected from alkyl esters, aralkyl esters or aryl esters of organic acids (claim 24);

(8) a method of reducing foaming of an aqueous agrochemical composition, the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters or aryl esters of organic acids, wherein the water-insoluble liquid silicone-containing antifoam agent is present in the organic solvent at a concentration of at least 10% by weight (claim 24); and

(9) a method for reducing or eliminating separation of a water-insoluble liquid silicone-containing antifoam in an aqueous agrochemical composition, the method comprising introducing a water-insoluble liquid silicone-containing antifoam into the aqueous agrochemical composition in the form of a solution in an organic solvent comprising at least one member selected from alkyl esters, aralkyl esters and aryl esters of organic acids (claim 25).

For at least the reasons given above, Applicants respectfully submit that the teaching of Fisher fails to make obvious Applicants' claimed invention as recited in independent claims 1, 9, 21, 23, 24 and 25. Since claims 4-6, 10-11, 14-16, 19-20, 22 and 26-27 depend from independent claims 1, 9, 21 and 25, and recite additional claim features, the teaching of Fisher also fails to make obvious dependent claims 4-6, 10-11, 14-16, 19-20, 22 and 26-27. Accordingly, withdrawal of this rejection is respectfully requested.

III. New Claims 28-33:

New claims 28-33 are directed to various embodiments of Applicants' claimed aqueous concentrates and aqueous concentrate compositions. New claims 28-33 depend from independent claims 1 and 21, and recite additional claim features.

Support for new claims 28-33 may be found throughout Applicants' original specification including, but not limited to, the following locations: page 10, lines 20-28 (claim 28); page 10, line 32 to page 11, line 6 (claim 29); page 9, lines 20-23 (claims 30-31); page 11, lines 25-28 (claim 32); and page 3, line 31 to page 4, line 11 (claim 33).

For at least the reasons provided above, new claims 28-33 are allowable over the art of record.

IV. Conclusion:

For at least the reasons given above, Applicants submit that claims 1, 4-6, 8-11, 14-16 and 18-33 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Metzmaier believe that further action is necessary to place the application in better condition for allowance, Examiner Metzmaier is respectfully requested to contact Applicants' representative at the telephone number listed below.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

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W&K Matter No.: 10075.0042USWO
Syngenta Docket No.: 70278